

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**JANNIE NASHA MITCHELL,**  
**Plaintiff,**

**v.**

**KELLY EILEEN CONWAY, *et al.*,**  
**Defendants.**

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**CIVIL ACTION NO. 21-CV-3906**

**ORDER**

**AND NOW**, this 5th day of July, 2022, upon consideration of Plaintiff Jannie Nasha Mitchell's Amended Complaint (ECF No. 7), it is **HEREBY ORDERED** that:

1. The Amended Complaint is **DISMISSED WITHOUT PREJUDICE**.
2. Mitchell may file a second amended complaint within thirty (30) days of the date of this Order. Any amended complaint must identify all defendants in the caption of the second amended complaint in addition to identifying them in the body of the second amended complaint and shall state the basis for Mitchell's claims against each defendant. The second amended complaint shall be a complete document that does not rely on the original Complaint or the Amended Complaint or other papers filed in this case to state a claim. When drafting her second amended complaint, Mitchell should be mindful of the Court's reasons for dismissing the claims in her Amended Complaint as explained in the Court's Memorandum. Upon the filing of a second amended complaint, the Clerk shall not make service until so **ORDERED** by the Court.
3. The Clerk of Court is **DIRECTED** to send Mitchell a blank copy of this Court's current standard form to be used by a self-represented litigant filing a civil action bearing the above-captioned civil action number. Mitchell may use this form to file her second amended

complaint if she chooses to do so.<sup>1</sup>

4. If Mitchell does not wish to amend and instead intends to stand on her Amended Complaint as originally pled, she may file a notice with the Court within thirty (30) days of the date of this Order stating that intent, at which time the Court will issue a final order dismissing the case. Any such notice should be titled “Notice to Stand on Complaint,” and shall include the civil action number for this case. *See Weber v. McGrogan*, 939 F.3d 232, 241 (3d Cir. 2019) (“If the plaintiff does not desire to amend, he may file an appropriate notice with the district court asserting his intent to stand on the complaint, at which time an order to dismiss the action would be appropriate.” (quoting *Borelli v. City of Reading*, 532 F.2d 950, 951 n.1 (3d Cir. 1976) (per curiam))).

5. If Mitchell fails to file any response to this Order, the Court will conclude that she intends to stand on her Amended Complaint and will issue a final order dismissing this case.<sup>2</sup> *See Weber*, 939 F.3d at 239-40 (explaining that a plaintiff’s intent to stand on his complaint may be inferred from inaction after issuance of an order directing him to take action to cure a defective complaint); *In re Westinghouse Sec. Litig.*, 90 F.3d 696, 703-04 (3d Cir. 1996) (holding “that the district court did not abuse its discretion when it dismissed with prejudice the otherwise viable claims . . . following plaintiffs’ decision not to replead those claims” when plaintiffs were warned “that failure to replead. . . would result in the dismissal.”).

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<sup>1</sup> This form is available on the Court’s website at <http://www.paed.uscourts.gov/documents2/forms/forms-pro-se>.

<sup>2</sup> The six-factor test announced in *Poulis v. State Farm Fire & Casualty Co.*, 747 F.2d 863 (3d Cir. 1984), is inapplicable to dismissal orders based on a plaintiff’s intention to stand on her complaint. *See Weber*, 939 F.3d at 241 n.11 (treating the “stand on the complaint” doctrine as distinct from dismissals under Federal Rule of Civil Procedure 41(b) for failure to comply with a court order, which require assessment of the *Poulis* factors). Indeed, an analysis under *Poulis* is not required when a plaintiff willfully abandons the case or makes adjudication impossible, as would be the case when a plaintiff opts not to amend her complaint, leaving the case without an operative pleading. *See Dickens v. Danberg*, 700 F. App’x 116, 118 n.2 (3d Cir. 2017) (per curiam) (“Where a plaintiff’s conduct clearly indicates that he willfully intends to abandon the case . . . a balancing of the *Poulis* factors is not necessary.”).

**BY THE COURT:**

**/s/Wendy Beetlestone, J.**

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**WENDY BEETLESTONE, J.**